

GUIDELINE ANSWERS
JUNE 2024 EXAMINATION
SETTING UP OF BUSINESS, INDUSTRIAL AND LABOUR LAWS
GROUP 1 PAPER 3
EXECUTIVE PROGRAMME
(SYLLABUS 2022)

Question Paper Weblink	https://www.icsi.edu/media/webmodules/examination/june2024/523.pdf
---------------------------------------	---

PART-I

Answer to Question No. 1(a)

The given benefits of LLP can be considered by A and B while deciding the legal structure for their business:

Dual benefits: Limited Liability Partnership is an alternate corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm, introduced in India by way of Limited Liability Partnership Act, 2008.

Cost effective: LLP is relatively a cheaper approach to incorporate as compared to a Private Limited Company and requires fewer compliances; its main improvement over General Partnership is that it limits the liabilities of its partners to their contributions to the business and offers each partner protection from negligence, misdeeds or incompetence of the other partners.

Suitable for Non-Scalable Businesses: If one is running a business that is unlikely to require equity funding, one may register an LLP as it combines several benefits of the private limited company and general partnership. It has limited liability, like a private limited company, and has a simpler structure, like a general partnership.

Fewer Compliances: The Ministry of Corporate Affairs (MCA) has given some concessions to the LLP. For example, an audit needs to be performed only if in any financial year the turnover is greater than Rs. 40 lakhs or whose contribution is more than Rs. 25 lakhs. Furthermore, whereas all structural changes need to be communicated to the RoC in the case of private limited companies, the requirement is minimal for LLPs.

Number of Partners: There is no limit to the number of partners there may be in a LLP. If one is building a large advertising agency, for example, one need not worry about any cap on the number of partners.

Answer to Question No. 1(b)

Section 11(2) of the LLP Act, 2008 governs the requirement of incorporation document.

Filing of incorporation documents in LLP Portal:

Once the LLP reserves its name, LLP must file its incorporation in web-based form FiLLip (Form for Incorporation of Limited Liability Partnership) with ROC.

Following documents are required to be attached along with the prescribed e-form FiLLip for getting registration of “Technical Solutions LLP”:

- Proof of Identity of Partners
- Residential proof of Partners
- Passport Size photograph of Partners
- Proof of Address of Registered office of LLP
- Subscription sheet signed by the promoters
- Digital Signature Certificate
- Latest Utility bill of registered office (not later than 2 months)
- NOC of owner of registered office, if taken on rent / lease
- Notice of Consent & Appointment of Designated Partners with their personal details
- Detail of LLP(s) and/ or company(s) in which partner/ designated partner is a director/ partner.

Answer to Question No. 1(c)

The key considerations for “Technical Solution LLP” when seeking investments from angel investors to finance its operations are as follows:

Angel investors are usually individuals or a group of industry professionals who are willing to fund the venture in return for an equity stake. As regulation 19F of SEBI (Alternative Investment Funds) Regulations, 2012, SEBI has made the following restrictions applicable to angel funds investing in an Indian company:

(1) Angel funds shall invest in startups which:

(c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds Rs.300 crore; and

(d) are not companies with family connection with any of the angel investors who are investing in the company.

(2) Investment by an angel fund in any venture capital undertaking shall not be less than Rs.25 Lakhs and shall not exceed Rs.10 Crores.

(3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of one year.

(4) Angel funds shall not invest in associates.

(5) Angel funds shall not invest more than twenty-five per cent of the total investments under all its schemes in one venture capital undertaking:

Provided that the compliance to this sub-regulation shall be ensured by the Angel Fund at the end of its tenure.

(6) An angel fund may also invest in the securities of companies incorporated outside India subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the Board from time to time.

Answer to Question No. 1(d)

The following documents are required to be uploaded by A and B with GST registration application form on the GST portal for GST registration of “Technical Solution LLP”:

1. Copy of Certificate of Incorporation of LLP & LLP Agreement
2. Permanent Account Number (PAN) of LLP
3. Consent / Resolution by designated partners for obtaining GST Registration
4. Declaration / Authorization to Authorized Signatory
5. Bank Account Details: Scanned copy of a cancelled cheque containing name of the Business entity, Bank Account No., MICR, IFSC and Branch details.
6. Photos of all Partners
7. PAN Card / Aadhar Card of all Partners

Answer to Question No. 1(e)

Following conditions are to be fulfilled for conversion of LLP “Technical Solution LLP” into a private limited Company “Technical Solutions Pvt Ltd”:

- All the partners should have approved the conversion of LLP.
- The LLP should have complied with all the required returns and compliances.
- Publication related to such conversion of LLP into a Private Company, in at least two newspapers, one in English Language and another in any vernacular language newspaper of the place of registered office.
- The Limited Liability Partnership must have at least two partners who are required for incorporation of a Private Limited company.
- There should be no open charges for or against the Company.

Answer to Question No. 2(a)

The Companies registered under the Section 8 of Companies Act, 2013 can avail the following benefits:

- Access to Tax benefits: Since Section 8 companies are charitable institutions, they have access to the various exemptions available under the Income Tax Act. Section 80G of the Income Tax Act renders plenty of tax-related benefits to these companies.
- Zero Stamp Duty: The Section 8 Companies are not liable to pay stamp duty on the Memorandum of Association (MOA) and Articles of Association (AOA), unlike other entities incorporated under the Companies Act, 2013.

- Minimal share capital: Unlike private limited, public limited, or OPC, a Section 8 company can be set up without the requirement of having minimum paid-up share capital of the Company.
- Exempted from suffix/prefix of name: Section 8 companies do not have the compulsion to affix the term like Limited or Private Limited in their name. These entities are registered with limited liability.
- Separate legal entity: Section 8 company possesses a distinct legal status which implies that entity's existence is independent of its members. The section 8 entity has perpetual existence.
- Improved Credibility: The flexible and transparent constitutional framework of Section 8 companies allows them to garner better credibility than other types of NGOs such as Society and trust.
- Privileges: Section 8 companies have been granted total/partial exemptions from various sections of the Companies Act, 2013 vide Notification No. F. No. 1/2/2014-CL.I dated June 5, 2015.

FSSAI Registration or License (In case of business of edibles): This is the national authority for ensuring the safety and standardization of food items in India. FSSAI stands for Food Safety and Standard Authority of India. All retail establishments trade outlets, kiosks, eateries, caterers, and cloud kitchens must follow to FSSAI regulations, get licenses, and periodically renew their registrations. Under FSSAI, the license or registration is divided into three categories namely:

- FSSAI Central License
- FSSAI State License
- FSSAI State Registration

Thus, Robinhood against Hunger is required to obtain FSSAI license for the manufacturing various types of food items.

Answer to Question No. 2(b)

According to section 4(7) of the Companies Act, 2013, any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

As per Section 6 of the Companies Act, 2013, any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

On basis of the above provision in the AOA of the PNC Ltd to give any person a right to participate in the divisible profits of the Company otherwise than as member is invalid.

Answer to Question No. 2(c)

Business entities which provide internet services or engaged in commercial communications ie. call center, BPO, Tele-education, Tele-banking, tele networking, e-commerce and other IT

enabled services who are categorised as ‘Other Service Providers’(OSP) under New Telecom Policy, 1999, must obtain a telecom license from Department of Telecommunication (DoT) under Ministry of Communications, Government of India.

The telecom license entitles the entities to provide telecommunication services in India. OSP license shall be categorized into two types:

1. Domestic OSP - OSP providing services to clients located within national boundaries of India
2. International OSP - OSP providing services to clients outside India.

So, considering the above facts, A and B require Domestic OSP as they want to setup business in Rewari, Haryana which is in India.

Process:

A company registered under the Companies Act, 2013 or under any other previous law i.e., the Companies Act, 1956 or LLP registered under Limited Liability Act, 2008 or Partnership Firm or organisations registered under Shops and establishment Act are eligible to obtain OSP license.

- a. To Obtain a OSP license, the Company or LLP shall file an Application in specified Form to the DoT through online on DoT portal.
- b. OSP license is a location specific and can have multiple registrations for each such site.

Documents required to obtain license:

- Certificate of Incorporation issued by ROC;
- Memorandum and Articles of Association;
- Copy of LLP Agreement;
- Board resolution Power of Attorney authorizing the Authorized signatory with attested signature;
- Resolution passed by all designated partners or Partners as per provisions of LLP Act;
- A Note on nature of business or activities of the proposed OSP;
- List of present directors of the Company;
- List of present designated partners of LLP;
- Present Shareholding pattern of the Company;
- Present Shareholding pattern of LLP.

All the documents must be certified with seal by company secretary or one of Directors or Statutory Auditors or public notary in case of Company.

All documents must be certified with seal by either designated partner or all partners or statutory Auditors or public notary in case of LLP.

The OSP license is valid for a period of 20 years and can be extended for further period of ten years from the expiry of twenty years.

State level Approval from the respective State Industrial Department.

Answer to Question No. 2(d)

The requirements for Workers Compensation and disability insurance as per the laws prevailing in USA are as follows:

As New York employers, the LLC founders must obtain and maintain workers' compensation insurance and disability insurance for its employees by purchasing a workers' compensation insurance policy and a disability benefits insurance policy from an authorized private insurance carrier or through the NYS Insurance Fund (or by self- insurance for workers' compensation).

The company's *federal Employer Identification Number ("EIN")* is the company's primary identification with respect to communications with the Workers' Compensation Board or by becoming a member of a group self- insurer authorized by the board. The company must give its EIN to its insurance carrier when obtaining or maintaining its workers' compensation or disability coverage. Workers' compensation insurance floor is calculated using each employee's risk classification, salary, and total payoff.

Each "covered employer" must post and maintain at the place of business a prescribed form, Notice of Compliance, Form DB-120, stating that the provisions have been named for the payment of disability benefits to all eligible employees. An employer who has employed in New York State one or more employees at least 30 days in any calendar year is a "covered employer" subject to the Disability Benefits Law after the expiration of four weeks following the 30th day of such employment (WCL §202). These 30 days of employment need not be consecutive days.

Answer to Question No. 2(e)

Benefits of incorporating a Nidhi Company under Nidhi Rules, 2014 are as follows:

1. Mobilization of Small Savings:

A Nidhi mobilizes small savings, mostly of the middle class and disburses loans to eligible borrowers. Owing to their small size and closeness to the customers, disbursement of loans is speedy. This is especially useful in case the borrower is in urgent needs of funds.

2. Minimal risk of Loan Repayment:

The repayment is guaranteed, as the loans are secured and due to peer pressure, borrowers ensure that loan is repaid on due dates.

3. Higher return on investment:

Nidhis offer a higher rate of interest on deposits. This makes it an attractive investment opportunity for people, especially the senior citizens.

4. Professional Management:

The Board of Directors of a Nidhi normally consists of senior persons who have experience in handling finances and who are well respected in social circles. This lends credibility to the institution and instils confidence in the minds of borrowers and depositors.

ABC Financial services is advised accordingly.

Answer to Question No. 3(a)

Degree of Control and Management: The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organization.

In sole proprietorship and OPC: ownership, management, and control are completely fused, and therefore, an entrepreneur has complete control over his business.

In partnership: management and control of business is jointly shared by the partners and their specific rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed. They have equal voice in the management of partnership business except where they agree to divide among themselves the business responsibilities in a different manner. Even then, they are legally accountable to each other.

In a company: However, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board, who are generally the elected representatives of shareholders.

Thus, a person wishing to have complete and direct control of business prefers proprietary organization rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if the activities are large, professional managers are required to handle the day-to-day affairs and there is need for corporate structure and management, he will prefer the company form of organization.

Answer to Question No. 3(b)

The residents of the housing complex can form a 'Resident Welfare Association' (RWA) or 'Apartment Owners Association' (AOA), which are types of legal entities that are best suited for their needs. These entities are designed to ensure proper maintenance and administration of the society.

The basic requirements for the formation of an RWA or AOA are as follows:

1. Membership: All the residents of the society can become members of the association.
2. Management Committee: A management committee needs to be formed which includes positions like President, Secretary, and Treasurer.
3. Registration: The association needs to be registered under the Societies Registration Act, 1860 or under the Delhi state's Apartment Ownership Act or Housing Cooperative Society.
4. Bye-Laws: The association should have its own bye-laws which govern the functioning of the association. These bye-laws should be in compliance with the Societies Registration Act, 1860 or the Delhi State's Apartment Ownership Act.
5. Meetings: Regular meetings of the members and the management committee should be held as per the bye-laws of the association.

Answer to Question No. 3(c)

The key characteristics of equity-based joint ventures are as following:

- a. There is an agreement to either create a new entity or for one of the parties to join into ownership of an existing entity
- b. Shared Ownership by the parties involved
- c. Shared management of the jointly owned entity
- d. Shared responsibilities regarding capital investment and other financing arrangements.

e. Shared profits and losses according to the Joint Venture Agreement.
Renewable Power Ltd is advised accordingly.

Answer to Question No. 3(d)

In order to convert Private Company into (One Person Company) OPC after calling the Board Meeting, Meeting of Shareholders/Members and passing of the necessary resolution, following forms are required to be filed: -

1. Filing of e-form MGT-14: In case of conversion of Company into One Person Company Special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly, as per section 117(3) (a), a copy of special resolution is required to be filed with concerned ROC through filing of E-form MGT-14 within 30 days of passing special resolution in the general meeting.

Following documents are required to be attached with e-form MGT-14:

- a. Notice of general meeting along with copy of explanatory statement under section 102;
- b. Certified true copy of special resolution;
- c. Altered memorandum of association;
- d. Altered articles of association;
- e. Certified true copy of board resolution may be attached as an optional attachment.

2. Filing of e-form INC-6: The company shall file an application in e-Form No. INC-6 for its conversion into One Person Company along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 by attaching the following details or documents, namely: -

1. altered e-MOA and e-AOQA;
 2. copy of NOC of every creditor with the application for conversion;
 3. affidavit of directors confirming that all the members of the company have given their consent for conversion.
 4. Affidavit
 5. Certified true copy of minutes, list of creditors and list of members.
 6. Copy of NOC of every creditor
 7. Consent of the nominee in Form No. INC-3 along with all enclosures
 8. Copy of PAN card of the nominee and member.
 9. Proof of identity of the nominee and member.
 10. Residential proof of the nominee and member.
- Any other information can be provided as an optional attachment(s).

3. Issuance of New Certificate of Incorporation: On approval of Form MGT- 14 and Form INC- 6, the Registrar will issue a fresh Certificate of Incorporation with the Changed name to the applicant company or the Conversion of Company into OPC.

Answer to Question No. 3(e)

The process for Closure of Project office in India opened by foreign entity is described as follows:

The Requests for closure of the Project Office (PO) and allowing the remittance of winding up proceeds of PO may be submitted to the designated AD Category – I bank by the BO/ LO/ PO or their nodal office, as the case may be.

The application for winding up may be submitted along with the following documents:

- a) Copy of the Reserve Bank's/AD Category-I bank's approval for establishing the PO.
- b) Auditor's certificate:
 - (i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant and indicating the manner of disposal of assets;
 - (ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc. of the office have been either fully met or adequately provided for; and
 - (iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained unrepatriated to India.
- c) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending against the BO / LO/ PO and there is no legal impediment to the remittance.
- d) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 2013, in case of winding up of the BO /LO in India, wherever applicable.
- e) The designated AD Category - I banks have to ensure that the BO / LO/ PO had filed their respective AACs.
- f) Any other document/s, specified by Reserve Bank of India / AD Category- I bank while granting approval.

Attempt all parts of either Q. No. 4 or Q. No 4A

Answer to Question No. 4(a)

The other terms and conditions for running the business of payment bank are as follows:

- To be registered as a public limited company under the Companies Act, 2013.
- Payment Banks cannot form subsidiaries.
- For the first five years, the promoters stake to remain at 40% at minimum.
- Foreign shareholding will be allowed in these banks as per extant FDI norms.
- The voting rights will be regulated as per provisions of The Banking Regulation Act 1949. [Voting rights are restricted at 10% for any one share holder. RBI has the discretion to raise this to 26% on merits.].
- If there is any acquisition of more than 5% shares this will require prior RBI approval.
- The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
- The bank should be fully networked from the beginning. (Initially, the deposits will be capped at Rs.1,00,000 per customer, but later it may be raised on the basis of performance of the bank.)
- No lending activity is permitted. Bank can accept utility bills.
- A quarter of its branches should be in unbanked rural areas.

Answer to Question No. 4(b)

The Central Government vide Notification S.O. 1702(E) dated 01.06.2020 notifies the criteria for classification of Micro, Small and Medium Enterprises. Under the new definition, there will be no more distinction between Manufacturing and Service MSMEs.

- (i) a micro enterprise, where the investment in Plant and Machinery or Equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
- (ii) a small enterprise, where the investment in Plant and Machinery or Equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees;
- (iii) a medium enterprise, where the investment in Plant and Machinery or Equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.

AB Handicrafts is advised accordingly.

Answer to Question No. 4(c)

Start-up India is a government initiative aimed at fostering entrepreneurship and promoting innovation in India. Some of the benefits available to startups under the Start-up India program include:

1. Simplified Compliance: Startups are provided with a simplified regulatory framework, reducing the regulatory burden and allowing them to focus more on their core business activities.
2. Tax Exemption: Eligible startups can avail themselves of income tax exemption for a specified period, typically the first three consecutive years out of their first ten years of operation.
3. Self-Certification: Startups can self-certify compliance with labor and environmental laws for up to three years, reducing regulatory hassle.
4. Faster Patent Examination: Startups can expedite the patent application process through fast-track examination, reducing the time and cost involved in securing patents.
5. Access to Funding: Startups can avail themselves of various funding schemes and incentives provided by the government and other agencies to facilitate access to finance.
6. Intellectual Property Rights Support: Startups can receive support for filing and prosecuting patents, trademarks, and designs through government schemes.
7. Startup India Hub: Startups have access to an online platform, the Startup India Hub, which provides resources, networking opportunities, and mentorship support.
8. Government Procurement: Startups are given preference in government procurement, allowing them to access a significant market and gain visibility.
9. Incubation Support: Startups can benefit from incubators and accelerators supported by the government, providing infrastructure, mentorship, and networking opportunities.
10. Innovation and Research Support: Startups can access government grants and schemes aimed at promoting innovation, research, and development activities.

These benefits are aimed at creating a conducive environment for startups to thrive and contribute to economic growth and job creation in India.

XYX Solutions Pvt Ltd is advised accordingly.

Answer to Question No. 4(d)

Import Export Code (IE Code) is a key business identification number which is mandatory for exporting or importing goods. It is a 10-digit code which is issued by the Directorate General of Foreign Trade (DGFT), Ministry of Commerce and Industry.

However, for services exports, IEC shall be not be necessary except when the service provider is taking benefits under the Foreign Trade Policy.

IE code has lifetime validity.

Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code.

The IE Code must be quoted by importers while clearing customs.

Also, banks require the importers IE Code while sending money abroad. For exporters, IE Code must be quoted while sending shipments and banks require the exporters IE Code while receiving money from abroad.

The nature of the firm obtaining an IEC may be any of the follows- "Proprietorship, Partnership, LLP, Limited Company, Trust, HUF and Society." Consequent upon introduction of GST, IEC number is the same as the PAN of the firm. The IEC would be separately issued by DGFT.

MN Ltd is advised accordingly.

Answer to Question No. 4(e)

Partnership Agreement	Trust Deed
1.Partners, as mentioned in the agreement runs the partnership firm. The procedure to admit a partner in the firm mentioned in the deed.	1. Trustees are generally appointed or elected. Procedure to elect/appoint the trustees is set out in the Trust Deed
2.A partnership deed can be between two or more persons. Maximum number of partners in a partnership firm can be 50 partners.	2. Three parties must be involved with any deed of trust: Trustor: This party is the borrower. A trustor is sometimes called an obligor. Trustee: As a third party to a deed of trust, the trustee holds the property's legal title. Beneficiary: This party is the lender.
3. The deed may mention a fixed term of partnership or for a specific undertaking, or may mention the condition of dissolution by notice of intention to dissolve, if mutually agreed by the partners.	4. Trust deed can provide for trust to be wound up within certain number of years.

5. The deed states the rights and duties of the Partners. Partners owe a fiduciary duty to each other, based loyalty, trust and confidence	5. The Trust Deed states the rights and duties of the Trustees as well as Beneficiaries. Trustees have fiduciary duties to beneficiaries
6. Expectations of partner are more limited to financial success of business ventures. More easily measured.	6. Expectations of trustees can be high difficult to satisfy beneficiaries with so many choices on where to spend income.

OR (Alternative question to Q. No. 4)

Answer to Question No. 4A(i)

The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business, public accountants and corporate service providers in Singapore.

1. Incorporation is done through Bizfile+, an electronic filing system.

The process starts with new company name application. The application for approval and reservation of a company name is to be submitted online at bizfile.gov.sg. An application fee of SGD 15 is payable for each approved company name. Once the application is submitted, the applicant can select to either pay the fee and continue with the incorporation later, or to immediately proceed to incorporation application.

Name application can be approved within a few minutes from payment if the name is available. However, it may take between 14 working days to 2 months if the application needs to be referred to another agency for approval or review. The lodger can proceed to register the business immediately after the name application is approved.

2. Once a name has been approved, it will be reserved for 120 days.

As of 2 June 2017, every newly incorporated business receives a free copy of its Business Profile upon the successful filling up of the incorporation forms and paying the incorporation fee.

The processing time is about 15 minutes from the time of successful submission of all documents and all information, and the registration fee payable is SGD 300. The ACRA will issue a notice of incorporation via electronic mail to the law firm or professional firm engaged for the purposes of incorporation upon the successful incorporation of the company together with the registration number of the company.

ABC Ltd is advised accordingly.

Answer to Question No. 4A(ii)

A unicorn is a term used to indicate a privately held startup company with a valuation of over \$1 billion. For a unicorn, the Journey starts from the growth stage, they are disruptors which start out in an incredibly unique way to solve everybody problem. The reasons these startup

become so successful is because all of their solutions fill a specific need in a new and different way.

The Indian startup ecosystem has developed dynamically in recent times. Two decades back, there were only few active investors and limited number of support organisations, such as incubators and accelerators. However, in the past decade there has been a significant increase in both investment activity and infrastructure facilities to provide the much-needed impetus to the expansion of the unicorn tribe.

The primary distinction between the startup and entrepreneurship is that an entrepreneur refers to all business ventures, new or old. It includes small businesses, partnerships, firms, sole-proprietorship and corporations which can be based on a new idea or on an existing idea. On the other hand, a startup is a newly emerged business venture started by individual founders to meet a market gap. Startups mostly mean new businesses that are solving market's problems with unique ideas.

Answer to Question No. 4A(iii)

Entrepreneurship And Skill Development Programme (ESDP) Scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country.

It is applicable to all the aspiring and existing entrepreneurs.

It facilitates entrepreneurship/ self-employment awareness and motivation to different sections of the society including SC/ ST/ Women, differently abled, Ex-servicemen and BPL persons as career options. Entrepreneurship & Skill Training in Agro Based Products, Hosiery, Food & Fruit Processing Industries, Carpet Weaving, Mechanical Engineering Workshop/ Machine Shop, Heat Treatment, Electroplating, Basic/Advance Welding/ Fabrication/ Sheet metal work, Basic/ Advance Carpentry, Glass & Ceramics etc. is the main target of the scheme.

The scheme make provision for management capacity building Training to existing entrepreneurs and their supervisory staff in Industrial Management, Human Resource Management, Marketing Management, Export Management/Documentation & Procedures, Materials Management, Financial/Working ~Capital Management, Information Technology, Digital Marketing, Quality Management/QMS/ISO 9000/EMS, WTO, IPR, Supply Chain Management, Retail Management, Logistics Management etc. The scheme widens the base of entrepreneurship by development, achievement, motivation and entrepreneurial skill to the different sections of the society.

Thus, ESDP scheme aims at promoting new enterprises, capacity building of existing MSMEs and inculcating entrepreneurial culture in the country.

Answer to Question No. 4A(iv)

Segregation of laws applicable on the Company into the Industry specific and general is essential for Secretarial Audit. After considering the following factors the auditor should make the segregation of the same based on the laws being applicable on the Company

- Key financial parameters such as turnover, paid-up share capital, net worth, borrowings, etc.

- Geographic location of registered office, units / divisions / plants / branches, etc.
- Status of company such as listed / unlisted
- Types / class of company such as Private, Public, Holding, Subsidiary,
- Foreign, Nidhi, Producer, Section 8, etc.
- Registration with various authorities such as SEZ, Sectoral Regulators, etc.
- Segment such as manufacturing / trading / service / e-commerce and industry classification thereof.
- Agreements governing rights, obligations of shareholders such as Joint venture, shareholders' agreements
- Number, class and category of employees / workers such as women, contractual employees, etc.

Answer to Question No. 4A(v)

Housing Finance Companies (HFCs) in India are governed by a specific set of laws and regulations which are as follows:

1. National Housing Bank Act, 1987;
2. The Housing Finance Companies (NHB) Directions, 2010;
3. Guidelines on Know your Customer and Anti-Money Laundering Measures;
4. Guidelines for Asset Liability Management System in Housing Finance Companies;
5. Housing Finance Companies- Issuance of Non-convertible Debentures on private placement basis (NHB) Directions, 2014;
6. Housing Finance Companies - Corporate Governance (National Housing Bank) Directions, 2016;
7. Housing Finance Companies - Auditor's Report (National Housing Bank) Directions, 2016;
8. Guidelines on Fair Practices Code for Housing Finance Companies;
9. Guidelines on Reporting and Monitoring of Frauds in Housing Finance Companies;
10. Information Technology Framework for HFCs - Guidelines;
11. Pension Fund Regulatory and Development Authority (Point of Presence) Regulations, 2018;
12. Pension Fund Regulatory and Development Authority (Redressal of Subscriber Grievance) Regulations 2015;
13. Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank Directions, 2021.

PART II

Answer to Question No. 5(a)

Duties of the Inspector with respect to the Safety of buildings and machinery are indicated in Section 40 of Factories Act, 1948 which are as follows:

If it appears to the Inspector that any building or part of a building or any part of the ways, machinery or plant in a factory is in such a condition that it is dangerous to human life or safety, he may serve on the occupier or manager or both of the factory an order in writing specifying the measures, which in his opinion should be adopted and requiring them to be carried out before a specified date.

If it appears to the Inspector that the use of any building or part of a building or any part of the ways, machinery or plant in a factory involves imminent danger to human life or safety he may serve on the occupier or manager or both of the factory an order in writing prohibiting its use until it has been properly repaired or altered.

Appointment of Safety Officers under Section 40B of Factories Act, 1948

If State Government requires, by notification in Official Gazette, the occupier shall employ such number of Safety Officers as may be specified in that notification in every factory

- (i) wherein one thousand or more workers are ordinarily employed, or
- (ii) wherein, in the opinion of the State Government, any manufacturing processor operation is carried on, which process or operation involves any risk of bodily injury, poisoning or disease or any other hazard to health, to the person employed in the factory.

Answer to Question No. 5(b)

Section 9 of Apprentices Act, 1961 deals with practical and basic training of apprentices. Following are the duties of XYZ Manufacturing Pvt Ltd with regards to providing basic and practical training to apprentices:

-Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.

-The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.

Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.

In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.

In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.

Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne:

- (i) If such employer employs two hundred and fifty workers or more, by the employer;
- (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;

- Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.

- Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentices technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in non-engineering.

In addition to the above XYZ Manufacturing Pvt Ltd to comply with requirement of Section 11 of Apprentices Act, 1961.

Answer to Question No. 5(c)

Section 5 of the Minimum Wages Act, 1948 deals with procedure for fixing and revising minimum wages.

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages, the appropriate Government can follow either of the two methods described below.

First Method [Section 5(1)(a)]

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages. The wage rates shall come into force from such date as may be specified in the notification. If no date is specified, wage rates shall come into force on the expiry of three months from the date of the issue of the notification.

Note: It was held in *Edward Mills Co. v. State of Ajmer (1955) A.L.R. SC*, that Committee appointed under Section 5 is only an advisory body and that Government is not bound to accept its recommendations.

Second Method [Section 5(1)(b)]

The method is known as the 'Notification Method'. When fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration.

The representations received will be considered by the appropriate Government. It will also consult the Advisory Board constituted under Section 7 and thereafter fix or revise the minimum rates of wages by notification in the Official Gazette. The new wage rates shall come into force from such date as may be specified in the notification. However, if no date is specified, the notification shall come into force on expiry of three months from the date of its issue. Minimum wage rates can be revised with retrospective effect. [1996 II LU 267 Kar.]

Answer to Question No. 5(d)

Contract Labour (Regulation and Abolition) Act, 1970 covers provision regarding registration of establishment employing contract labour, license of contractor, welfare and health of Contract Labour and penalty & procedure, etc.

According to section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. Section 10 vests overriding power in Appropriate Government irrespective of anything contained in the Act.

Offences by Companies. - Section 25 of the Contract Labour (Regulation and Abolition) Act, 1970 provides for that if the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

It is provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

However, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section-(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm means a partner in the firm.

Attempt all parts of either Q. No. 6 or Q. No. 6A

Answer to Question No. 6(a)

In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India, WP (C) No.8649/2007*, the respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual harassment at workplace as the alleged misconduct took place not at the workplace but at an official mess where the woman officer was residing. It was also argued that the complainant was even senior to the respondent and therefore no ‘favour’ could be extracted by the respondent from the complainant and thus the alleged act would not constitute ‘sexual harassment’.

The Delhi High Court while considering this matter held this as ‘clearly misconceived’. The Delhi High Court observed that the aim and objective of formulating the Vishakha Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly.

Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term ‘workplace’ by confining the meaning to the commonly understood expression “office”. It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of videoconferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for

him to say that he had not committed the act at 'workplace' but at his Residence' and get away with the same. Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

- Proximity from the place of work
- Control of the management over such a place/residence where the working woman is residing
- Such a residence has to be an extension or contiguous part of the working place.

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under 'workplace'.

In view of the above provisions and case law, the contention of A is invalid.

Answer to Question No. 6(b)

Under the Maternity Benefit Act, 1961, maternity leave entitlement and benefits are provided to eligible female employees to ensure their health, well-being, and job security during pregnancy and childbirth. Here are the key provisions regarding maternity leave entitlement and benefits under the Act:

1. Duration of Maternity Leave: The Maternity Benefit Act entitles eligible female employees to a minimum of 26 weeks of maternity leave. However, for women who have already had two or more children, the duration of maternity leave is reduced to 12 weeks.

2. Commencement of Maternity Leave: Maternity leave can commence up to eight weeks before the expected date of delivery (pre-natal leave). If the woman works in a factory, and her delivery occurs during the pre-natal leave period, the maternity leave will automatically extend for six weeks following the delivery.

3. Wages During Maternity Leave: During the period of maternity leave, the woman is entitled to receive maternity benefit, which is payable at the rate of her average daily wage for the period of her absence. The average daily wage is calculated based on the average wage earned by the woman during the three months immediately preceding the date of her maternity leave.

4. Medical Bonus: In addition to maternity benefit, eligible women are entitled to receive a medical bonus if they do not receive free medical care from their employer during pregnancy and childbirth.

5. Leave for Miscarriage or Medical Termination of Pregnancy: In case of miscarriage or medical termination of pregnancy, a woman is entitled to six weeks of maternity leave immediately following the day of her miscarriage or termination.

6. Notice of claim for Maternity Leave: A woman intending to take maternity leave is required to give her employer written notice of her pregnancy and her intention to avail maternity leave, at least six weeks before the date of her expected delivery.

7. Protection Against Dismissal or Discharge: The Maternity Benefit Act prohibits the dismissal or discharge of a woman during her absence on maternity leave. It also prohibits the employer from changing her conditions of service to her disadvantage during this period.

8. Nursing breaks: Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

9. Creche Facility: Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.

10. Employer's Obligations: Employers are required to display an abstract of the Maternity Benefit Act at the workplace and provide information about maternity benefits to eligible female employees. Employers must also ensure compliance with the provisions of the Act regarding maternity leave, benefits, and protections for female employees.

These provisions of the Maternity Benefit Act aim to support women during pregnancy and childbirth, promote their health and well-being, and ensure their job security and economic independence. It is essential for employers to be aware of and comply with these provisions to protect the rights of female employees.

Thus, Shailja is advised accordingly on the maternity leave entitlement and benefits available to her under Maternity Benefit Act, 1961.

Answer to Question No. 6(c)

Section 9 of Payment of Bonus Act, 1965 deals with Disqualification for Bonus

According to Section 9 of the act an employee shall be disqualified from receiving bonus under the Payment of Bonus Act, 1965, if he is dismissed from service for:

- Fraud, or
- Riotous or violent behavior while on the premises of the establishment; or
- Theft, misappropriation or sabotage of any property of the establishment

This provision is based on the recommendation of Bonus Commission, which stated that:

After all, bonus can only be shared by those workers who promote the stability and well-being of the industry, not by those who positively exhibit disruptive tendencies. Bonuses, without a doubt, impose a duty of good behaviour.

In *Gammon India Ltd Vs Niranjan Das* 6, the Court held that an employee who is dismissed from service for fraud, riotous or aggressive behaviour on the premises of the company, or who is guilty of theft, misappropriation, or sabotage of any establishment's property is disqualified from receiving bonus for the accounting year under section 9 of the Payment of Bonus Act,

1965. A dismissed employee who has been reinstated with back pay has evidently not committed the above crimes and has not been fired. As a result, he is entitled to a bonus. In view of the above, those employees of ABC Limited, who are guilty of theft are not entitled to payment of bonus.

Answer to Question No. 6(d)

1. As per the provisions of the Industrial Disputes Act, 1947 even in the case of an economic recession, the company must follow due process for layoffs as per the Act. If Mr. Y believes that the company did not follow the proper procedure or that his termination was discriminatory, he can challenge it.
2. The government plays a crucial role in such disputes. If the dispute cannot be resolved at the company level, it can be referred to the appropriate government authority. The government can then refer the dispute to a conciliation officer, Board, Labour Court, or Tribunal as per the Act. The Government also ensures that the rights of the workers are protected during this process. The adjudication of industrial disputes by Conciliation Board, Labour Court, Court of Inquiry, Industrial Tribunal or National Tribunal can take place when a reference to this effect has been made by the appropriate Government under Section 10 of Industrial Disputes Act, 1947.
3. If Y's claim is upheld, the remedies available to him can include reinstatement to his previous position or compensation. The exact remedy would depend on the specifics of the case and the decision of the Labour court or tribunal. The decision of the Labour court or Tribunal is binding on both Mr. Y and the company.

OR (Alternative question to Q. No. 6)

Answer to Question No. 6A(i)

Section 74 of Employees' State Insurance Act, 1948 provides that the State Government shall by notification in the Official Gazette constitute an Employees' Insurance Court (E.I) for such local area as may be specified in the notification. The Court shall consist of such number of judges as the State Government may think fit. Any person who is or has been judicial officer or is a legal practitioner of 5 years standing shall be qualified to be a judge of E.I Court. The State Government may appoint the same Court for two or more local areas or more Courts for the same local area and may regulate the distribution of business between them.

Matters to be decided by E.I. Court

According to Section 75 of Employees' State Insurance Act, 1948, following matters to be decided by the EI Court:

- (1) If any question or dispute arises as to-
 - (a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employee's contribution, or
 - (b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

- (c) the rate of contribution payable by a principal employer in respect of any employee, or
 - (d) the person who is or was the principal employer in respect of any employee, or
 - (e) the right of any person to any benefit and as to the amount and duration thereof, or
 - (ee) any direction issued by the Corporation under section 55A on a review of any payment of dependant's benefits, or
 - (g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, or between a person and the Corporation or between an employee and a principal or immediate employer in respect of any contribution or benefit or other dues payable or recoverable under this Act or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act such question or dispute subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of ESI Act.
- (2) Subject to the provisions of sub-section (2A), the following claims shall be decided by the Employees' Insurance Court, namely: --
- (a) claim for the recovery of contributions from the principal employer;
 - (b) claim by a principal employer to recover contributions from any immediate employer;
 - (d) claim against a principal employer under section 68;
 - (e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and
 - (f) any claim for the recovery of any benefit admissible under ESI Act.

Answer to Question No. 6A(ii)

The Code on Social Security, 2020 under section 2 (35) defines gig worker " as a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship.

Gig worker is an individual who engages in short-term, flexible jobs, typically as a freelancer, consultant, or independent contractor. Unlike traditional employees bound to a single employer, gig workers operate in the gig economy, taking on various projects from different clients, often facilitated through online platforms.

They are often self-employed, meaning they manage their own schedules and workload without being tied to a single employer. They usually don't receive standard employment benefits but may have access to alternative options. Gig workers, or independent contractors, enjoy several benefits but also face unique challenges.

Benefits:

1. Flexibility: Gig workers often have the freedom to choose when and where they work, providing a level of flexibility not typically found in traditional employment.
2. Variety: They have the opportunity to work on a variety of projects, which can lead to a diverse portfolio and a broad range of experience.
3. Independence: Gig workers have more control over their work, allowing them to align their tasks with their personal interests and skills.

4. Cost-Effectiveness: Gig workers often work remotely, which can save costs associated with commuting and maintaining a professional wardrobe.

Challenges:

1. Income Instability: Gig work can be unpredictable, leading to periods of feast or famine. This lack of a stable income can make financial planning challenging.
2. Lack of Benefits: Unlike traditional employees, gig workers typically do not receive benefits such as health insurance, retirement plans, or paid time off.
3. Isolation: Gig workers often work alone, which can lead to feelings of isolation or disconnection from a work community.
4. Job Security: Gig workers may face uncertainty regarding job security as they are often hired on a project-to-project basis.

Answer to Question No. 6A(iii)

Section 10A of Industrial Disputes Act, 1947 provides for the settlement by voluntary reference of dispute to arbitration.

To achieve this purpose, Section 10A makes the following provisions:

(i) Where any industrial dispute exists or is apprehended and the same has not yet been referred for adjudication to a Labour Court, Tribunal or National Tribunal, the employer and the workmen may refer the dispute, by a written agreement, to arbitration specifying the arbitrator or arbitrators. The presiding officer of a Labour Court or Tribunal or National Tribunal can also be named by the parties as arbitrator. Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.

(ii) An arbitration agreement referred to in sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(iii) A copy of the arbitration agreement shall be forwarded to appropriate Government and the Conciliation Officer and the appropriate Government shall within one month from the date of the receipt of such copy, publish the same in the Official Gazette.

(iv) According to Section 10-A(3A), where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred above, issue a notification in such manner as may be prescribed; and when any such notification is issued, the employer and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(v) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or all arbitrators, as the case may be.

(vi) Where an industrial dispute has been referred to arbitration and a notification has been issued, the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(vii) Nothing in the Arbitration Act, 1940 shall apply to arbitrations under this Section.

Answer to Question No. 6A(iv)

Article 43 of the Indian Constitution requires the state to endeavour to secure, by suitable legislation, or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities. In particular, the state is to promote cottage industries on an individual or co-operative basis in rural areas.

Article 43 imposes an obligation towards ensuring the provision of a living wage' in all sectors as well as acceptable conditions of work. This provision enunciates the revolutionary doctrine that employees are entitled as of right to certain reliefs.

A living wage' is such wage as enables the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter, but includes education for children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. A 'minimum wage', on the other hand, is just sufficient to cover the bare physical needs of a worker and his family. Minimum wage is to be fixed in an industry irrespective of its capacity to pay. Fixation of minimum wage is in public interest and does not impose an unreasonable restriction on the right to carry on a trade guaranteed by Article 19(1)(g). (*Edward Mills Co. v. Ajmer*, AIR 1955 SC 25).
